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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1941.

No. 822

DE MET'S INCORPORATED,
Plaintiff-Petitioner,

AND

ROBERT E. WOOD,
Intervener-Petitioner,

vs.

SAMUEL INSULL, JR., C. W. SILLS, H. L. STUART, STANLEY FIELD, EDWARD J. DOYLE, F. K. SHRADER AND JOHN H. GULICK,
Defendants-Respondents.

BRIEF OF RESPONDENT, STANLEY FIELD, IN OPPOSITION TO PETITION FOR CERTIORARI.

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INDEX.

Statement of the Case 1
Summary of Argument 8
Argument 9
Conclusion 14

Table of Cases.

Chapin v. C. & E. I. R. R. Co., 18 Ill. App. 47 ..... 10, 12
City of Chicago v. Babcock, 143 Ill. 358 10
Erie Railroad v. Tompkins, 304 U. S. 64 9
Gilbert v. St. Louis, Springfield & Peoria Railroad, 220 Ill. App. 51 11
Gore v. Henrotin, 165 Ill. App. 222 10
Guth v. Vaughan, 231 Ill. App. 143 11
Mooney v. City of Chicago, 239 Ill. 414 ..... 10, 13
Onyschuk v. A. Vincent Sons Co., 277 Ill. App. 414 11
Parmelee v. Lawrence, 44 Ill. 405 11
People v. Becker, 253 Ill. 131 13
Petroyeanis v. Pirola, 205 Ill. App. 310 11
Stanley v. Leahy, 87 Ill. App. 465 10
Vigeant v. Scully, 35 Ill. App. 44 10
Wallner v. Chicago Traction Co., 245 Ill. 148 ..... 10, 11
West Chicago St. R. R. Co. v. Piper, 165 Ill. 325 10

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BRIEF OF RESPONDENT, STANLEY FIELD, IN OPPOSITION TO PETITION FOR CERTIORARI.

STATEMENT OF THE CASE IN RESPECT TO THIS RESPONDENT.

In the District Court of the United States for the Northern District of Illinois, through the efforts of counsel for plaintiffs, two cases were heard together on motions of defendants to dismiss for insufficiency of the complaints.

Those cases were the instant case and the case of *Aiken, et al.* v. *Samuel Insull, Jr., et al.* Both cases were dismissed. The plaintiffs appealed and again in the United

States Court of Appeals for the Seventh Circuit the cases were argued together. There was affirmance in part and reversal in part.

The two cases involved wholly distinct corporations, different transactions, and different directors. The instant case deals with a corporation styled "Corporation Securities Co. of Chicago." The *Aiken* case deals with a corporation styled "Insull Utility Investments, Inc."

This respondent, Stanley Field, is not a party to the *Aiken* case. He at no time had any connection with the corporation implicated in the *Aiken* case, whether as officer, director or stockholder. He is a stranger to that case and to the affairs of the company there complained of. The two corporations had nothing in common save that each was under Insull management.

The complaint in the *Aiken* case is insufficient but that in the instant case lacks every element that a pleading must include, whether the criterion be that the document should state a cause of action, or the looser test of simply requiring the pleading to inform the defendants of the nature of the complaint.

Under these circumstances the plaintiff-petitioner of course seeks to sustain, not the valueless complaint in the instant case, but the more complete pleading in the *Aiken* case to which Field is not and never has been a party. In opposing this petition for certiorari he is forced to answer the statement of facts and arguments presented for the allowance of the writ made in the *Aiken* case.[1]

This position, we believe, is unfair and prejudicial to the respondent Field.

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[1] The Petition for Certiorari in the instant case incorporates by reference the statement of facts, questions and reasons presented for the allowance of the writ, and supporting brief in the "Petition for Writ of Certiorari and Brief in Support Thereof" filed in *Aiken, et al.* v. *Samuel Insull, Jr., et al.*, and docketed as No. 821. (pp. 5, 6 of instant Petition)

The very limited statement of facts in the instant Petition in addition to the facts incorporated by reference from the Petition in that other case is incorrect and incomplete.

The instant Petition states that "Corporation Securities Company of Chicago was organized by Samuel Insull and the other defendants herein about October 5, 1929, as an investment company. (R. 3)" (p. 2) Such a statement is not true as to this respondent, Stanley Field. Not only did the complaint not so allege but it was admitted in the amendment to the complaint which the plaintiff-petitioner asked leave to file that Field was not elected to the board of directors of Corporation Securities Co. of Chicago until June 11, 1930. (R. 305) Prior to that date this respondent had had no connection with the corporation. At no time, either before, on, or after June 11, 1930, was Field an officer or member of the executive committee of Corporation Securities Co. of Chicago, nor did he have any personal transactions with the corporation. (R. 305)

In January, 1933, following the bankruptcy of Corporation Securities Co. of Chicago in April, 1932, the plaintiff-petitioner, De Met's Incorporated, brought an action to recover damages from all the directors of that company (including this respondent), for allegedly inducing the company to breach the covenants contained in its Serial Gold Notes by making pledges of collateral security for loans obtained from certain Chicago and New York banks in the fall of 1930 and the spring of 1931, without ratably securing the holders of the Serial Gold Notes. (R. 2) Diversity of citizenship was averred as the sole ground for federal jurisdiction, the plaintiff alleging that it was a Delaware corporation owning $20,000 principal amount of Serial Gold Bonds. (R. 3, 6) The basis of the charge against the directors of Corporation Securities Co. of Chicago is the allegation that "Each of said loans and pledges above referred to was wrongfully authorized, approved and ratified

by the defendants herein". (R. 11)[1] More than four years later the petitioner-intervener, Robert E. Wood, intervened as a member of a so-called "Committee" on behalf of certain holders of Serial Gold Bonds. (R. 47)

Subsequent to the filing of this action against the directors of Corporation Securities Co. of Chicago, suits were brought against certain Chicago and New York banks on behalf of the same noteholders who had sued the directors, seeking to recover damages from the banks for receiving the pledge of the same securities which the earlier suit had charged that the directors of the borrowing company, Corporation Securities Co. of Chicago, wrongfully authorized, approved and ratified.

Late in 1937 the actions against the banks were settled "in full" (R. 126), and "full releases" (R. 129) and "full title" to the collateral securities alleged to have been wrongfully pledged (R. 128) were given the banks. The settlement was presented for approval to the District Court for the Northern District of Illinois by petition of the complainant noteholders in the consolidated bank litigation, and was approved and confirmed by the court.

The first Paragraph, numbered A, of the settlement agreement provided that the banks should pay $1,200,000 in cash "in full settlement of all claims." (R. 126) In addition, the banks agreed to procure the withdrawal of claims aggregating $13,662,377.96 theretofore filed against the

[1] The complaint also alleged liability on the part of all the defendant directors in respect of the payment of dividends in the early thirties in alleged contravention of Section 23 of the 1919 Illinois Corporation Act. As to this charge, the District Court sustained the defendants' motions to dismiss for failure of the complaint to state any actionable facts. The Circuit Court of Appeals for the Seventh Circuit, however, reversed this holding and remanded the cause for trial in the District Court. This respondent, Stanley Field, has filed a petition for certiorari from that judgment of the Circuit Court of Appeals in the cause entitled, "Stanley Field, Petitioner *vs.* DeMet's Incorporated, Respondent", which was docketed herein as No. 827.

bankruptcy estate of Corporation Securities Co. of Chicago. (R. 128) The banks further agreed to cancel the $3,999,000 principal amount of Serial Gold Notes owned and controlled by them so that these notes would not be entitled to receive any portion of the settlement fund nor be entitled to any distribution in the bankruptcy proceedings of Corporation Securities Co. of Chicago. (R. 129) In return for this "full settlement" the banks received (1) "delivery of full releases" and (2) "full title" to the securities which in that litigation and in the instant suit were alleged to have been wrongfully pledged with the banks. (R. 128-9)

An endorsement of release and transfer was stamped on each of the Serial Gold Notes of Corporation Securities Co. of Chicago prior to distribution of the settlement funds, and provided, among other things, that:

> "By the acceptance of said compromise and settlement the holder hereof, among other things, releases all claims against the banks * * * and assigns to said respective banks all claims of such holder to the collateral pledged to said respective banks by Corporation Securities Co. of Chicago as security for the loans to Corporation Securities Co. of Chicago by said respective banks." (R. 194-195)

The release and transfers executed by the Trustee in Bankruptcy of Corporation Securities Co. of Chicago provided, among other things, that "for and in consideration of the consummation of the aforesaid settlement," the Trustee in Bankruptcy of Corporation Securities Co. of Chicago "has remised, released and forever discharged" the banks "from all and all manner * * * claims and demands whatsoever, in law or in equity," and does "quitclaim, assign, transfer and set over unto" the banks all right and title to the securities alleged to have been wrongfully pledged as collateral. (R. 212-215)

On the basis of this "full settlement" with the banks and "full releases" of the banks and giving of "full title" to

the banks in the collateral securities alleged to have been wrongfully pledged, this respondent filed a motion for summary judgment, as did the other defendant-directors of Corporation Securities Co. of Chicago. The District Court sustained those motions and entered judgment in favor of the defendant-directors, and the Circuit Court of Appeals for the Seventh Circuit affirmed the judgment. Both courts stated in so holding that they were following the decisions of the Illinois State courts, which all parties have recognized to be applicable and controlling.

The District Court stated in part:

> "The original placing of this property in the hands of the banks was the wrong complained of, and is the same wrong now complained of against the defendants. To permit plaintiffs to settle with the banks and confirm title in them to the disputed assets and yet reserve a right to further pursue defendants for the same wrong, to me seems completely unjust and inequitable.
>
> "There could be no difference of opinion regarding the effect of the settlement as disclosed by plaintiffs in their petition to the Court except for the single paragraph K of their petition and like expressions carried into the consent orders of the Court. Aside from Paragraph K, I think all would agree that a full settlement and release had been given the banks. This paragraph with the inescapable implications it carries would read: 'Nothing in this agreement of settlement and compromise * * * shall be construed to operate as a release or to affect any causes of action * * * against any person * * * other than any party to this settlement * * *; but is to be construed as a release and settlement of the cause of action against the parties hereto.' (Underscored words interpolated by writer.)
>
> "There is not a single expression in the entire petition that even hints that plaintiffs were only contracting with the banks to refrain from their further prosecution. By throwing in Paragraph K, it is hoped to have the settlement construed as something it was not.

The settlement could without doubt be set up by the banks in bar of another suit. If so, this is conclusive.

"It is said that in view of Paragraph K, it would be a fraud on the debenture holders to now hold that they had released their asserted cause of action against defendants. I think not. They were the moving parties and are in no position to complain of a situation that they have brought about by the insertion of a meaningless and repugnant attempted reservation. If they had in fact released the banks they were bound to know that and were bound to know the legal effect of such release. I cannot construe the settlement with the banks to be something it was not.

"My judgment is that plaintiffs have no cause of action in so far as it is bottomed upon the alleged wrongful pledging of assets to the banks for the reason that there has been a full release of such cause of action and for the further reasons indicated. The motions for summary judgment to this extent will be allowed.

"My conclusions are in accord with what I deem the law of Illinois to be. While some Illinois cases use language not completely approved in others, their consistent holdings have been that a release of one joint tort feasor releases all. It is scarcely fair to say that *Parmelee* v. *Lawrence,* 44 Ill. 405, overrules the two earlier Illinois cases, yet it does adopt a more liberal attitude than the two earlier cases. In Parmelee *vs.* Lawrence, however, I think it plain that the parties were only intending a covenant not to sue the settling party and the language used was fairly expressive of such intention; moreover, to have placed a different construction on it would have clearly been a fraud upon Lawrence." (R. 295-296)

The Circuit Court of Appeals for the Seventh Circuit, in confirming the judgment of the District Court in favor of the defendants, stated in part:

"In our case the settlement agreement, read in its background of approval orders and confirmation decrees, discloses very definitely that the parties intended to settle and compromise the cause of action sued on, in so far as the banks were concerned. The

debenture holders and the trustee in bankruptcy not only released their claims for damages against the banks, but they waived whatever interest they had in the collateral and confirmed title thereto in the banks. In return the banks cancelled the bank indebtedness of I.U.I., waived their claims against the estate of the bankrupt corporation, and paid almost $3,500,000 in cash. There can be no real controversy as to whether the settlement and compromise agreement was a release to the banks or merely a covenant not to sue the banks. We are satisfied that in substance (actual intent) as well as in form (language employed), the instrument constituted a release." (R. 351-2, the *Aiken* opinion as adopted in the *De Met's* opinion, R. 344, 346)

SUMMARY OF ARGUMENT.

The decision below is in accord with the controlling decisions of the Supreme Court of Illinois and the Appellate Court of Illinois: Accord and satisfaction with, or release of, one or more tortfeasors releases all whose acts contributed to cause the same injury.

ARGUMENT.

THE DECISION BELOW IS IN ACCORD WITH THE CONTROLLING DECISIONS OF THE SUPREME COURT OF ILLINOIS AND THE APPELLATE COURT OF ILLINOIS: ACCORD AND SATISFACTION WITH, OR RELEASE OF, ONE OR MORE TORTFEASORS RELEASES ALL WHOSE ACTS CONTRIBUTED TO CAUSE THE SAME INJURY.

This Petition for Certiorari involves the single question whether under the common law of Illinois, as declared and applied by the Supreme Court of Illinois and the Appellate Court of Illinois, accord and satisfaction with, or release of, one or more tortfeasors releases all whose acts contributed to cause the same injury. If this is the law of Illinois, all federal courts, of course, must apply that law under the decision of this Court in *Erie Railroad* v. *Tompkins*, 304 U. S. 64 (1938), and numerous subsequent decisions. Both courts below, the District Court and the Circuit Court of Appeals, held that the law of Illinois was that accord and satisfaction with, or release of, one or more tortfeasors releases all whose acts contributed to cause the same injury.

The "conflict with applicable local decisions" which the petitioners urge as the basis of allowance of certiorari is defined by them as "absence of a decision by the state courts on the question of local law as to the effect of a reservation clause in a release of joint tortfeasors • • •." (pp. 8, 10 of *Aiken* Petition which is incorporated by reference on p. 5 of instant Petition.) The petitioners contend that "If this point were presented to the Illinois courts, they would unquestionably hold • • •" the way the petitioners argue they should hold. (p. 30 of *Aiken* Brief which is incorporated by reference on p. 6 of instant Petition.)

Such a contention, even if it could be supported, would not constitute a sufficient reason for certiorari. The holdings of the Illinois State courts make it clear, however, that the petitioners' contention cannot be supported.

The Illinois State Court Decisions.

The Illinois State courts have always and without exception held that accord and satisfaction with, or release of, one or more tortfeasors releases all whose acts contributed to cause the same injury. In the earliest reported Illinois decision on the subject, *Chapin* v. *C. & E. I. R. R. Co.*, 18 Ill. App. 47, 50 (1885), the Appellate Court for the Third District of Illinois declared this rule of law and quoted with approval from an earlier Massachusetts decision as follows:

> "It is an ancient doctrine that a release to one joint tort trespasser, or a satisfaction from him, discharges the whole. The same doctrine applies to all joint torts, and to torts for which the injured party has an election to sue one or more parties severally."

No Illinois State court has departed from or limited that rule of law in any respect. A chronological list of the principal decisions of the Illinois State courts follows:

Chapin v. *C. & E. I. R. R. Co.*, 18 Ill. App. 47, 50 (1885).

Vigeant v. *Scully*, 35 Ill. App. 44, 47 (1889).

City of Chicago v. *Babcock*, 143 Ill. 358, 366, 32 N. E. 271, 273 (1892).

West Chicago St. R. R. Co. v. *Piper*, 165 Ill. 325, 328, 46 N. E. 186, 187 (1897).

Stanley v. *Leahy*, 87 Ill. App. 465, 467 (1899).

Mooney v. *City of Chicago*, 239 Ill. 414, 423, 88 N. E. 194, 196 (1909).

Wallner v. *Chicago Traction Co.*, 245 Ill. 148, 151, 91 N. E. 1053, 1054.

Gore v. *Henrotin*, 165 Ill. App. 222, 224 (1911).

Petroyeanis v. *Pirola,* 205 Ill. App. 310, 312 (1917).

Gilbert v. *St. Louis, Springfield & Peoria Railroad,* 220 Ill. App. 51, 53 (1920).

Guth v. *Vaughan,* 231 Ill. App. 143, 151 (1923).

Onyschuk v. *A. Vincent Sons Co.,* 277 Ill. App. 414, 427 (1934).

The petitioners refer to some of the cases cited above and undertake to distinguish them, contending that "An Illinois case is not determinative of this case unless its facts are similar to the facts in the instant case." (pp. 29-30 of *Aiken* Brief which is incorporated by reference on p. 6 of instant Petition.) They do not contend, however, that the Illinois decisions evidence any modification of the rule of law declared and applied in the cases listed above and summarized by the Supreme Court of Illinois in *Wallner* v. *Chicago Traction Co.,* 245 Ill. 148, 151 (1910) as follows:

> "There is no doubt that a release of one of several joint tortfeasors releases all and that an accord and satisfaction by one joint tortfeasor has the same effect as to all. It is equally certain that payment and acceptance of a sum of money in satisfaction of an unliquidated demand is a good accord and satisfaction." (Omitting citations.)

The petitioners state that "The leading case in Illinois on the subject is that of *Parmelee* v. *Lawrence,* 44 Ill. 405, decided in 1867." (p. 21 of *Aiken* Brief, which is incorporated by reference on p. 6 of instant Petition.) In that case which, as the Circuit Court of Appeals pointed out, involved joint debtors and not joint tortfeasors, the Supreme Court of Illinois stated a rule of law which is equally controlling here, as follows on page 409:

> "The difficult question in this case relates to the effect to be given to the instrument executed by Lawrence to Bigelow. If it is to be regarded as an abso-

> lute and unconditional release of Bigelow, it must also operate as a discharge of his co-obligors * * *."

Both the District Court and the Circuit Court of Appeals held, as the settlement documents in terms provide, that the banks were absolutely and unconditionally released. (See pp. 6 to 8 of this brief.)

The charge against the directors of Corporation Securities Co. of Chicago, including this respondent, at the most is that they induced the corporation of which they were directors to pledge certain collateral securities to the banks in alleged violation of the covenants of the corporation's notes. The charge against the banks was that they received the pledge of this collateral. In the instant case the suits against the banks had not been tried when the settlement was effected.[1] The holding of both the District Court (R. 296) and the Circuit Court of Appeals (R. 350) was that the action of both the directors and the banks was necessary to the consummation of the wrong complained of. "According to Illinois law, 'It is enough if they were both liable for the same injury'," as the Circuit Court of Appeals stated, citing and quoting from *Chapin* v. *C. & E. I.*, 18 Ill. App. 47, 50 (1885). (R. 350)

In the *Chapin* case, to which the Court thus refers, a passenger was injured in a collision between two railroad trains. A release which he executed to one railroad company was pleaded as a defense by the other and was upheld, the court stating at page 50:

> "It is conceded that the action in this case is brought to recover for the same injury for which settlement has been made with the Wabash company, but it is insisted that the two companies were not joint tort feasors, were therefore not jointly liable, and that the

[1] Therefore, Section II of the *Aiken* Brief has no application to the facts of the instant case. (See statement on p. 5 of instant Petition: "Question No. 7 and Reason No. 6" presented in the *Aiken* case do not apply in the instant case because the facts on which they are based do not exist here.)

> release of one does not have the effect of discharging the other from liability to the plaintiff. Whether they were joint tort feasors or not, we do not deem it important in the view we take of the case, to decide. It is enough if they were both liable for the same injury."

The Supreme Court of Illinois declared and applied the same rule of law in *Mooney* v. *City of Chicago,* 239 Ill. 414 (1909).[1] In that case a man was injured while driving a team and wagon on a city street. The accident was due to two factors: the negligence of the man's employer in failing to keep the wagon in proper repair and the negligence of the city in failing to adequately maintain the street. The man made a settlement with his employer and furnished him with a release. Later he died and his next of kin brought an action against the city under the death statute based on the same injury. The trial court and the appellate court had held that the cause of action released before the man's death was an entirely different cause of action and did not furnish a defense to the city. The Supreme Court reversed this ruling and held that there was only one injury and that the release to the employer was a bar to the action against the city.

The decisions of the Illinois State courts, therefore, fully support the judgment of both the District Court and the Circuit Court of Appeals in this case that, under the common law of Illinois, accord and satisfaction with, or release of, one or more tortfeasors releases all whose acts contributed to cause the same injury.

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[1] *People* v. *Becker*, 253 Ill. 131 (1911), which the petitioners cite, is entirely consistent, since the injuries caused by the wrongful acts there involved were separate and distinct. Of course, a judgment on warrants drawn by the State Auditor in favor of himself did not affect a subsequent suit involving different warrants drawn by the Auditor in favor of the State Treasurer, as the court there held.

Conclusion.

We urge that the Petition of DeMet's Incorporated, *et al.* for a Writ of Certiorari be denied.

Respectfully submitted,

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